

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 9(A) of 9(C) OF 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 12, 2016

MOTIONS HEARING

THE HONORABLE DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Open court. Defendant and counsel present.)

2 THE COURTROOM DEPUTY: EP:13-CR-370 Marco Antonio
3 Delgado.

4 THE COURT: I'd ask for announcements.

5 MR. GONZALEZ: Good morning, Your Honor. Jose Luis
6 Gonzalez, Anna Arreola and Debra Kanof for the government and we
7 are ready.

8 THE COURT: Good morning.

9 MR. HANSHEW: Good morning, Your Honor. Erik Hanshaw
10 and Maureen Franco on behalf of Mr. Delgado.

11 THE COURT: Good morning to both of you.

12 Mr. Hanshaw, we're here on your motion to dismiss or
13 in the alternative to disqualify the AUSA in the Western
14 District.

15 All right. Who's your first witness?

16 MR. HANSHEW: Your Honor, defense calls Mr. Fernandez
17 Gireud to the stand.

18 THE COURT: Mr. Gireud.

19 MS. KANOF: Your Honor, Mr. Gireud's attorney is here
20 in the courtroom. May he sit at counsel table?

21 THE COURT: Oh, absolutely.

22 Mr. Gireud, where are you?

23 THE WITNESS: Good morning, Your Honor.

24 MS. KANOF: And for the record, his name is Colin
25 Hobbs.

1 (Witness sworn by the court.)

2 MR. HANSHEW: May I proceed, Your Honor?

3 THE COURT: Yes, sir.

4 FERNANDO GIREUD,

5 DIRECT EXAMINATION BY THE DEFENSE

6 BY MR. HANSHEW:

7 Q. Sir, could you please state your name for the record?

8 A. Fernandez Gireud.

9 Q. And Mr. Gireud, do you understand that the purpose of this
10 hearing today is about your interaction with the government in
11 regards to a subpoena?

12 A. Yes, sir.

13 Q. And in preparation for today's hearing, did you review any
14 documents, sir?

15 A. No, sir.

16 Q. Did you have any conversations with law enforcement
17 officials regarding this hearing?

18 A. Yes on -- last week, Friday, I think I was called by
19 Mr. Jose Luis. He wanted to ask me questions and tell me that
20 we were going to have a hearing this morning regarding that
21 situation.

22 Q. Okay. And what were the questions that he asked you?

23 A. Well, he asked me questions, number one, he wanted me to
24 know if I knew what a legal representation was. He went
25 through -- he asked me, for example, have you ever had attorneys

1 in your life. And I said, yes.

2 THE COURT: Attorneys where?

3 THE WITNESS: Have you ever have attorney -- have you
4 ever had representation in your life.

5 THE COURT: In your life.

6 THE WITNESS: Have you ever hire attorneys, and I said
7 yes, I have. And I gave him one or two examples of attorneys
8 that I have and what was the relationship and all of that, and
9 he wanted me to know if I was aware of what it's -- what does he
10 mean by legal representation and that it -- what is that, so I
11 went and head and tell him that two or three situations in my
12 life that I had to hire legal counsel and I explained that to
13 him.

14 BY MR. HANSHEW:

15 Q. Can you explain those, please?

16 A. Well, for example, he asked me what is -- the first time
17 that I have an attorney was when I was working for El Paso
18 Electric. I was discharged and I hired an attorney in El Paso
19 to representing [sic] me on the case against El Paso Electric.
20 And for example, he asked me what kind of -- how do you know he
21 was your attorney. Well, we signed our contract. We have a
22 contract. In this case, he was going to work on contingency
23 basis or on commission. And he was representing me. We signed
24 a contract. I -- (indiscernible) -- attorney for this case.

25 Q. Okay. What were the other examples that you explained?

1 A. When I have -- when I started this situation, I contracted
2 Mary Stillinger. This is a completely different case than her
3 case. I discussed the situation and she was retained as my
4 attorney. In this case, she work -- she had a fee. I have to
5 pay a fee and we signed a contract. The contract says that she
6 was going to representing me in the case and we have a fee and
7 we have a contract.

8 In the first case, we have a contract, but we didn't
9 have a fee. It was on a contingency basis.

10 Q. Okay. And did you give other examples to Mr. Gonzalez?

11 A. Yes, I think we talked about the Rene Ordoñez, which is
12 another attorney that I have for a civil case. And again in his
13 case we have a contract. We discussed the issues and we -- he
14 presented me with a contract and the contract has a fee, also,
15 in this case, so I gave him a fee and he's working on my case
16 and he's representing me.

17 Q. Okay. Did you give any other examples to Mr. Gonzalez?

18 A. No, sir. I think that's all I give. I don't remember.

19 Q. Okay. And did Mr. Gonzalez explain to you his opinion of
20 what attorney-client relationship was?

21 A. Did he explain to me what was attorney-privilege
22 relationship was [sic]? Is that what are you asking, I'm sorry?

23 Q. Correct, sir.

24 A. Yes. Yes.

25 Q. What did he tell you?

1 A. Attorney-privilege information is that when you hire an
2 attorney and somebody is representing you, you have the right to
3 tell them anything that you need to talk to or they -- the cases
4 you have to present it with documents, I guess, whatever you
5 have. And they are representing you, so you have an
6 attorney-privilege relationship with him.

7 Q. And that's what Mr. Gonzalez explained to you recently?

8 A. To begin with, I don't remember if he explained -- if we
9 discussed the attorney privilege, but I think that's what I
10 understand it is.

11 Q. This conversation was on Friday; is that right?

12 A. Yes. Yes, I think so.

13 Q. And that would have been three days ago?

14 A. Yes, yes.

15 Q. Okay. So what else did Mr. Gonzalez explain to you about
16 his opinion of attorney-client relationships?

17 A. He just said in general this is -- we just want you -- what
18 I want you to understand is -- I want -- actually, what I want
19 to know is if you understand what's an attorney-client
20 relationship, and if you understand when you are being
21 represented by somebody and when you are not.

22 So in other words, if you have an attorney, I want you
23 to understand what is it that you have and if you don't have one
24 what is it that you have.

25 Q. Okay. And so my question is, again, sir, what did he

1 explain to you as his definition of the attorney-client
2 relationship?

3 A. His definition is that if you have a contract, if you hire
4 an attorney to represent you and you have a contract, then he's
5 representing you and you have a client relationship with an
6 attorney, I guess.

7 Q. Okay. So, he explained to you that the way that the
8 attorney-client relationship exists is only if there's a
9 contract and you've been hired; is that right?

10 A. Yes, that's what it is.

11 Q. Okay. Did he explain anything else about his understanding
12 of attorney-client relationship?

13 A. No, sir.

14 Q. Okay. And about how long was this conversation you had?

15 A. I don't know. Probably, 30 minutes we spend there. I
16 don't -- I didn't use a watch. I don't keep time.

17 Q. Was it telephonic or were you in person?

18 A. I'm sorry?

19 Q. Did you meet in person?

20 A. Yes, we met in person.

21 Q. Where at?

22 A. We were at the second floor of the federal building, which
23 is a block from here.

24 Q. The U.S. Attorney Office?

25 A. The U.S. Attorney office.

1 Q. And did you record that conversation?

2 A. No, sir, I don't record.

3 Q. Did you see Mr. Gonzalez record the conversation?

4 A. I don't think I saw him recording it.

5 Q. And other than Mr. Gonzalez, who else was present?

6 A. The first ten minutes, I guess, or five minutes -- again, I
7 don't keep track of time -- it was only him and me. And later
8 on, Agent Joe Fry came into the room and he sat down there for
9 another 10, 15 minutes.

10 Q. And nobody else came or entered into that conversation or
11 the room during the rest of the time?

12 A. No, sir.

13 Q. Okay. Did Mr. Gonzalez take notes?

14 A. Yes, he did took [sic] one or two pages of notes or three
15 pages. Yes, he did take notes.

16 Q. How about Mr. Fry?

17 A. I don't think he did take notes.

18 Q. Did you take notes?

19 A. I have -- I took two notes, yes.

20 Q. You took --

21 A. I made two notes, yes.

22 Q. And what were those notes?

23 A. Note number one was how Mr. Gonzalez -- Mr. Gonzalez asked
24 me how I got the subpoena for the request of the documents to
25 collect the documents that I think you sent. And I didn't

1 remember how I got them, so he said make a note and make sure
2 that you know. If they ask you at least you know how you got
3 it.

4 And the second question was make sure that you bring
5 all of the documents that you provide, uh, uh, as in find them,
6 look at the documents and see if you can get them just so you
7 can have them with you. And I think that's -- those were the
8 only two questions I have.

9 Q. Okay. And so he explained to you how to answer the
10 question about when you -- who provided the subpoena to you?

11 A. No. He asked me -- he asked me, do you know how did you
12 got these subpoena documents? And at the time, I didn't recall
13 exactly how did I got them, because I have subpoenas delivered
14 to me by people at my house and I have some other ones that Mary
15 Stillinger sent me through e-mail through Rene Ordoñez, and then
16 I get it myself, which is the case of this one.

17 Q. Okay. Your attorney provided it to you, correct?

18 A. Yes, sir.

19 Q. All right. And were you able to, when you reviewed these
20 notes, determine when he gave that to you?

21 A. No, I didn't check the date, but it was somewhere in March,
22 March something.

23 Q. Early March or late March, if you recall?

24 A. Late March, I think.

25 Q. Okay. Now, other than that meeting with Mr. Gonzalez and

1 Agent Fry, did you speak with anyone else before today's hearing
2 about this hearing?

3 A. Yes, sir.

4 Q. And who is that?

5 A. Brett Hobbs, which is my attorney.

6 Q. But he is in the courtroom here today, correct?

7 A. Yes, he's right here.

8 Q. All right. And he is your attorney for this matter?

9 A. Yes.

10 Q. Now he wasn't your attorney when you received the subpoena
11 though, correct?

12 A. No, sir.

13 Q. Who was that?

14 A. I thought it was Mary Stillinger.

15 Q. You said you thought. Does that mean you were wrong about
16 that?

17 A. Well, uh, I was always been in the impression that she was
18 my attorney, that we never cancel our contract, because she was
19 also helping me another civil lawsuit that we have with Sulzer,
20 a company in Houston, and she withdrew from that one, and that's
21 when Rene Ordoñez came into the game. So, I didn't know until
22 almost Friday before, the day of the subpoena, that I wasn't
23 represented by her, that now it is Rene Ordoñez. And I talked
24 to Rene Ordoñez and he says I'm not representing you in this
25 case. I'm representing you in the civil case.

1 Q. Okay. So you're saying the subpoena -- well, let me
2 approach first.

3 MR. HANSHEW: If I may?

4 THE COURT: Yes, sir.

5 BY MR. HANSHEW:

6 Q. Sir, if you could take a look at that document in front of
7 you?

8 A. Yes, sir.

9 Q. Is that document familiar to you?

10 A. Yes. This is the document, the subpoena to produce the
11 documents.

12 Q. If you could do me a favor, speak into the microphone, so
13 we can all hear.

14 A. I'm sorry.

15 Q. Thank you. No problem.

16 A. I'm sorry.

17 Yes, this is the document that we've been -- we're
18 discussing right now.

19 Q. Okay. And this is the document that your attorney Rene
20 Ordoñez provided to you?

21 A. Yes, sir.

22 Q. And he provided it to you in March, correct?

23 A. Yes, sir.

24 Q. Now, you were just explaining that -- well, let me have you
25 turn to page three of that document, if you can, number two at

1 the bottom, sir.

2 A. Okay, sir.

3 Q. And at the top there it indicates that you're to produce
4 the following documents in court on or before April 11th; is
5 that right?

6 A. Yes, sir.

7 Q. Okay. And you indicated that you didn't know until the
8 Friday before that your now former attorney, Mary Stillinger,
9 wasn't assisting you with this; is that correct?

10 A. Yes -- well, I left her a bunch of messages a week or two
11 weeks before and she never returned my e-mails or, I mean, my
12 calls or anything. So, until that day -- I mean, I was putting
13 all of these documents together during that time, but then I
14 realized that I don't have all of the documents, that we
15 never -- that we don't have all of the set of documents. So I
16 was kind of afraid or something, so I say if I don't fulfill
17 this document, am I doing something wrong or something, so I
18 just wanted to find that -- somebody, that everything was fine,
19 that I was okay. I mean I can only produce what I have. I
20 cannot produce something I don't have or collect, I'm sorry.

21 Q. Okay. So, it would be fair to say then that when you
22 received this document from attorney Rene Ordoñez in March --

23 A. Yes.

24 Q. -- you immediately read it and reviewed it, correct?

25 A. Yes. I start looking at this [sic] documents. I knew I

1 had some times to look for the documents and yes.

2 Q. And you knew then, when you first read it, that it had a
3 due date of April 11th, correct?

4 A. Yes, I do.

5 Q. And you knew it had to be provided to the court, correct?

6 A. Yes, I do.

7 Q. Okay. And you were just saying, that caused you concern,
8 right?

9 A. It caused my concern that I don't -- when I read through
10 them pretty quick, I realize that I don't have all of the
11 documents. They don't exist, some of the documents I never had.

12 Q. Because you wanted to be in compliance with the Court's
13 order?

14 A. Yes, of course.

15 Q. So, you said already you reached out to your attorney. Is
16 that attorney Mary Stillinger?

17 A. Yes, I did.

18 Q. Okay. And you did that via telephone?

19 A. I left some messages in her office, yes. And yes. And I
20 never got a call back.

21 Q. And you never received any callbacks?

22 A. Later on, somewhere, I receive a call from Juan Godinez,
23 which is his -- her husband, and I think he's the manager of
24 his [sic] office or something, and he called me and told me that
25 they withdrew from the case on this date and all of that, and I

1 should be talking to Rene Ordoñez on these cases and things like
2 that. But they emphasized you have to collect documents as much
3 as you have and you have to collect that because you have to
4 provide those documents.

5 Q. Okay. And when was that call?

6 A. I don't know, sir. I don't have the exact dates and all of
7 that. But it was between -- now I see that the document for
8 this was given to me I guess or sealed on March the 4, so it
9 must be somewhere between that and April 8 or something like
10 that.

11 Q. Okay. They're due on April 11th, right?

12 A. Yes, which was Monday.

13 Q. A Monday. Okay. So you don't know -- I mean in relation
14 to the due date, when did Ms. Stillinger's office contact you?

15 A. No, sir. I don't have the exact dates or anything, but it
16 was, of course, prior to this.

17 Q. Okay. Earlier you had indicated that you didn't know that
18 until the Friday before?

19 A. Yeah. Again, I may receive it or probably was a little bit
20 before that I -- that I found out that -- no, it was before.

21 I'm sorry. I misstate something. It was before, because I -- I
22 talked to Rene Ordoñez before on that, when he told me,
23 Fernando, you -- I'm not your -- I'm your civil attorney. I'm
24 not your attorney for this case and you need to get the
25 documents as soon as you can. You have a due date of this date

1 so you have to collect the documents, yes.

2 Q. When was that conversation?

3 A. I don't know, sir. It could be on -- in different dates I
4 talked to him several times.

5 Q. Okay.

6 A. It was probably between March the 4 and April, something
7 like that, April 9 or the week of.

8 Q. That's a whole month time frame?

9 A. Yes, sir. I talk to them all the time and I -- yes. And I
10 was looking for documents. These are documents that happened
11 three, four years ago and I've been looking for most of the
12 documents, yes.

13 Q. Okay. So then what you said earlier about the first time
14 that you learned this was being the Friday before, that's not
15 correct?

16 A. No, the Friday before is when I was -- well, let me tell
17 you another thing that happened.

18 Q. Well, my question, sir, is, what you said earlier, the
19 first time you learned of this was the Friday before, that is
20 not correct?

21 A. That is not correct. You are right. It was probably a
22 week or two before. I don't have -- I don't remember the dates.

23 Q. Okay. And at this point, you're still concerned, right,
24 because you wanted to comply with this court order?

25 A. Yes, sir.

1 Q. Okay. And so after you'd been told by your various
2 attorneys that they are not representing you on this, you reach
3 out to the government?

4 A. No, sir. I -- I never reached out to them until -- there's
5 a few things that happened in between.

6 My mother has been very ill for a few years. She's
7 been on bed [sic] for a few years.

8 Q. My question was, sir -- I'm sorry to interrupt you -- but
9 my question was, though, you learned from your lawyers that
10 they're not representing you on this --

11 A. Yes.

12 Q. -- and after that, you then contact the government?

13 A. No. I contact the government on Friday. I don't know what
14 day it is. The 8, Friday, prior to Monday the 11.

15 Q. Okay. So the first time you contact any government
16 official about the subpoena --

17 A. It was Friday.

18 Q. -- is Friday?

19 A. Yes, sir.

20 Q. Okay.

21 A. Yes.

22 Q. So you didn't speak with Agent Fry in the beginning of
23 April, sir?

24 A. No, no. I'm sorry. Yes, somewhere in April, at the
25 beginning of April, I -- Agent Fry is the person that always

1 keep us informed if they -- if the dates are going to be changed
2 or things are going to be delayed under that. And I remember I
3 talked to him. Again, I don't know the time, but it was
4 somewhere in April, yes, I talked to him. And I ask him, I'm
5 working in documents for the subpoena and all of that.

6 Actually, I said I received a subpoena on that, and I
7 believe a lot of the documents, they already in the possession,
8 so what am I doing? He said, Fernando, talk to your attorneys.
9 And that was the answers that I always got from him.

10 Q. That's the answer you got from him?

11 A. Yes.

12 Q. Okay. And Ms. Arreola, you know who she is, correct?

13 A. Yes, I know.

14 Q. And she's in the courtroom today?

15 A. Yes, she's there.

16 Q. And she also relayed a message to you to talk to your
17 lawyer about the subpoena, correct?

18 A. I think -- well, as I said, you asked me if I talked to
19 Agent Fry. I talked to Agent Fry previous to this Friday. And
20 I think on that Friday, which is I think the 8 -- yes, Friday
21 the 8 of April, I -- I have finally put as much as documents as
22 I could together and I was on my way to copy the documents, but
23 again, I called again Mary Stillinger and so -- and people,
24 trying to ask a question that, okay, if I don't have all of the
25 documents because I don't have them, what do I do? And i didn't

1 get ahold of anyone.

2 So I -- I called my son. My son is in El Paso, in
3 town, because my daughter is getting married, and he told me
4 again like everybody says, you have to put together what you
5 have and that's all you can do. There's no way that you can --
6 if you don't have them, you don't have them. It's simple as
7 that.

8 Q. Okay. So the people that you reached out to were your
9 attorneys, correct?

10 A. Yes, sir.

11 Q. And --

12 A. Well, I talked to my son on the day again and then when I
13 was --

14 Q. And your son is an attorney, correct?

15 A. Yes, he is.

16 Q. And you contacted him in his capacity as an attorney as
17 well, correct?

18 A. Well, he's my son.

19 Q. Well, but do you recall then, because he's a lawyer, to
20 give you legal advice about this, right?

21 A. I just had a question, yes, I did.

22 Q. You didn't call any other family members to ask how to
23 respond to this subpoena?

24 A. Other family members, no, sir.

25 Q. You didn't, correct?

1 A. No, I didn't.

2 Q. He's the lawyer?

3 A. He's the one who knows the law, yes.

4 Q. And you wanted his advice to make sure you were following
5 the legal requirements?

6 A. And again he --

7 Q. My question was --

8 A. Yes.

9 Q. -- did you call him to make sure you were following the
10 legal requirements?

11 A. Again, when you are under stress and pressure and the
12 situations you haven't even let me explain, but, yes, I ask him
13 just to be -- to be okay, to be sure that I was not doing
14 something wrong or something.

15 Q. And by that you mean something illegal?

16 A. No, by if I -- if you ask me on the subpoena to produce ten
17 documents and I only have eight, I just wanted to make sure I
18 only have eight, what do I -- I mean, there's nothing I can do
19 to produce the document. They -- I cannot produce documents. I
20 just have to -- it says collect what you have, so I don't have
21 documents, so what do I -- he said just collect what you have
22 and that's all you can do.

23 Q. And my question is for you, you asked lawyers to explain
24 that to you?

25 A. I just asked what happened if I don't have documents. They

1 said nothing, just put together what you have and that's it,
2 yes.

3 Q. So, yes?

4 A. Yes.

5 Q. Okay. And after you didn't get a response from your
6 previously retained lawyers and then your son who's a -- who's a
7 lawyer, you turn to the Government, correct?

8 A. I called Mr. Fry, yes, on Friday.

9 Q. And he told you that you needed to speak to your lawyer
10 about it?

11 A. He told me, Fernando, you need to talk to your attorney on
12 this. That's all I can tell you.

13 Q. Okay.

14 A. He's not an attorney to begin with.

15 Q. So at this point, you still haven't got any legal response
16 how to respond?

17 A. No, and --

18 Q. "Yes" or "no," sir.

19 At that point, you hadn't received counsel from your
20 lawyers?

21 A. Oh, they told me just collect what you have and turn them
22 in.

23 Q. That was their legal advice?

24 A. Yes.

25 Q. Okay. And so then you had a discussion with Ms. Kanof,

1 correct?

2 A. Yes. When I called Agent Fry and I said I am under a lot
3 of pressure, I have a wedding coming, my mother is very sick
4 right now, I have a wedding that we've been trying to delay, my
5 daughter is getting married on Saturday, and I want to make sure
6 that -- I need to review this. And he says, Fernando, talk to
7 your attorneys. And I said I cannot reach anybody right now,
8 not even my son. My son, I didn't know where he was that day.
9 He didn't answer my phone that day, that afternoon, and I said
10 I'm on my way to copy this. And Agent Fry says, if you want,
11 let me -- let me ask the ladies. That's the way -- he said, let
12 me talk to Ms. Kanof or to Anna and see what they -- if they
13 have anything to say. That's all he says.

14 Q. And when was that?

15 A. On Friday afternoon.

16 Q. But previous to that, that you had made arrangements to
17 actually meet with Ms. Kanof at her office?

18 A. No, sir. No, sir.

19 Q. You never made any arrangements to meet?

20 A. This is -- this is on the call that I have with Mr. Fry.
21 After I talk to Mr. Fry, he says let me call the ladies, let me
22 ask the ladies. Then about 30 minutes later or 15 minutes
23 later, I don't recall the time, I was driving to FedEx-Kinkos on
24 Mesa to get copies of the documents, and I receive a call from
25 Agent Fry and he said I have Ms. Kanof and Ms. Anna Arreola on

1 the phone.

2 Q. Okay. And then what did --

3 A. And then I said, I'm sorry to bother you. I don't have
4 people call me back. Even though I already talked to my son and
5 told me just do this, but I said, for me, a subpoena is a very
6 important document and I just want to make sure that I am doing
7 the right thing. So -- so Ms. -- I think Ms. Kanof says,
8 Fernando you just produce what you have and you turn that in and
9 that's all you can do. There's nothing else.

10 Q. So she had a copy of the subpoena at this point, correct?

11 A. No. No, she doesn't have a copy.

12 Q. She didn't?

13 A. Oh, of this document itself of the subpoena?

14 Q. Yes, sir.

15 A. I don't know, sir.

16 Q. But you were having a discussion about it, right?

17 A. I said I have a subpoena from an attorney and I have to
18 produce these documents and I just want to make sure I'm not
19 doing something wrong by not providing documents.

20 Q. But you had already provided a copy to Agent Fry?

21 A. No, sir.

22 Q. You hadn't provided a copy to any government official?

23 A. I don't remember I ever did that.

24 No, actually, I never did. I don't recall doing that.

25 Q. Okay. Then --

1 A. The copy came from me from Rene Ordoñez.

2 Q. Okay. So you never gave a copy at any point to the
3 government?

4 A. Not at this point. This is Friday afternoon with talking
5 to them. And Ms. Kanof, when I'm talking to her, I don't even
6 remember the time. I think it was like 5 o'clock or something
7 that Friday. And she said, Fernando, just collect what you have
8 and turn it in on Monday. That's all you can do. And I even --

9 Q. What else did you discuss with her?

10 A. I said my problem is, Ms. Kanof, is not being an attorney
11 and I don't have all of the documents. And she again replied,
12 you have to collect what you have and that's all you can do.

13 And I even said, well, for example, they asking me and
14 I'm going ballistic in the middle of a lot of things, and I'm
15 going by like say, for example, they want me to put documents of
16 minutes of the company time -- and I don't have it. We never
17 did something. Again she said, just collect what you have and
18 that's all you can do.

19 Q. Okay. So you're explaining to her what the request is,
20 right?

21 A. I just used one example or two examples of documents I
22 didn't have and I (indiscernible), and she said, Fernando, just
23 collect --

24 Q. So my question was, you're explaining to her what some of
25 the requests were, correct?

1 A. I talk about two of the things that I didn't have and I
2 mentioned that to her. I said, I don't have these documents,
3 for example. What do I do?

4 Q. So the answer is, yes. You explained to her what the
5 requests were; yes or no, sir?

6 A. Yes. One, yes.

7 Q. Okay. And you asked for her to give you an explanation of
8 what that meant so were you compliant, right?

9 A. Actually, I'm not even -- I don't know if I'm asking
10 questions. I'm just going ballistic because of all of things
11 that I have. And I said I don't have of this document, so I
12 don't know what to do and all of that, and she said just collect
13 what you have.

14 Q. Right. But you just gave the example that you said you
15 were going ballistic to her --

16 A. Yes.

17 Q. -- explaining that they're asking for minutes and you don't
18 have it, correct?

19 A. Yes, I -- I --

20 Q. And she in turn gives you a response about that example?

21 A. She said just collect --

22 Q. My question is "yes" or "no"; did she give you a response,
23 sir?

24 A. Yes. Yes, sir.

25 Q. And did you feel less ballistic at that point?

1 A. No, sir. I still felt the pressure and all of that, but
2 I -- I mean I said, okay. I mean there's nothing I can do. I
3 mean she's not telling me what to do or nothing. She just
4 says --

5 Q. I didn't ask you if she's telling you what to do. I asked
6 did she give you a response to your question in the example?

7 A. Yes, she said collect the documents and produce what you
8 have.

9 Q. And you know that she's a lawyer, right?

10 A. Yes, I know he's a -- she's a lawyer.

11 Q. And all of the other people that you called before that,
12 that you didn't get a response from were lawyers as well,
13 correct?

14 A. Yes, sir.

15 Q. All right. And then she explained how to respond?

16 A. No, she didn't explain how to respond. She just said
17 collect the documents and --

18 Q. Well, isn't that responding, sir?

19 A. Well, yes, you might say, yes.

20 Q. Okay. And she told you, you could or you could or could
21 not provide documents based on whether you had them?

22 A. No. She just says collect the documents that you have and
23 give that. That's all she says.

24 Q. And did she explain to you about substituting other
25 documents in or out?

1 A. Not at all. No, sir.

2 Q. She never told you, don't substitute documents that you
3 don't have -- for ones you don't have. I'm sorry.

4 A. I don't exactly recall what was the conversation to be
5 honest with you, but it was -- again, it was just collect what
6 you have and that's all you are going to be delivering.

7 Q. Okay.

8 A. She never told me to produce or nothing. Show said collect
9 what you have and deliver it. That's it.

10 Q. Okay. Did -- but she explained to you that don't put
11 something in if it's not responsive to the questions, right?

12 A. I don't remember exactly those words, but she just says you
13 collect what you have and that's what you are going to present.
14 That's it.

15 Q. That's all she ever told you?

16 A. I don't recall any more things. I mean this -- this is.

17 Q. Well, "yes" or "no," sir. Is that all that she told you?

18 A. No, sir. The -- the --

19 Q. That's her only response to your questions?

20 A. Yes.

21 Q. Just turn in what you have?

22 A. Turn in what you have.

23 Q. Okay. But then you get into a discussion about how --
24 well, let me go to Sunday and your mom passes; is that right,
25 sir?

1 A. Yes, sir.

2 Q. And my condolences to you for that.

3 A. Thank you, sir.

4 Q. And you then contact Ms. Kanof again, correct?

5 A. Yes -- no, after -- after that conversation on Friday, and
6 again, I was desperate, and she just said, if you want, you can
7 come up to the office on Monday and we -- I'll take you to
8 deliver the documents. I walk you to deliver the documents.

9 Q. Okay. So there was actually a scheduled meeting with
10 Ms. Kanof in her office?

11 A. She said whenever you are ready to bring in the documents
12 on Monday, if you want, I can walk with you the documents. I
13 can go with you to deliver the documents.

14 Q. Okay. So the answer is "yes," you made arrangements to
15 meet with Ms. Kanof about complying with the order, correct?

16 A. No, sir.

17 Q. Well, I'm confused then.

18 You're saying that --

19 A. Well, you're saying that I make --

20 Q. You -- let me ask the question.

21 A. You're saying that I make arrangements to comply with the
22 documents. No. We make arraignments that she said, I will walk
23 with you to deliver the documents.

24 Q. Okay. And that's because the court order requires you to
25 deliver the documents to the court, right?

1 A. Yes. Actually, I didn't even think about where to go. I
2 thought --

3 Q. My question, sir, was --

4 A. Yes.

5 Q. -- the order required that you deliver the documents to the
6 court.

7 A. Yes, sir.

8 Q. Okay.

9 A. Yes, sir.

10 Q. And you made an arrangement with her to go to her office on
11 Monday to then turn in those documents?

12 A. Yes.

13 Q. Okay. So that you were in compliance with the court's
14 order?

15 A. Yes, sir.

16 Q. All right. And you then go to the U.S. Attorney's Office
17 on Monday, correct?

18 A. Yeah. What happened is Saturday my mother -- I mean,
19 Sunday, my mother passed away. This is the day after my
20 daughter's wedding and we have about 50 people. All of her
21 friends from Houston came and they were going to be there all
22 day and we were going to start bringing people to the airport on
23 Sunday. And they called me around 11 o'clock that my mom passed
24 away that morning.

25 So -- and they also told me that my brother in Mexico

1 made arrangements to do the cremation on Monday right away.

2 Q. My question was, sir, and then again, I -- you know, I'm
3 sympathetic to your family circumstances, but my question wasn't
4 about that. My question was, you went on Monday to meet
5 Ms. Kanof with the documents, correct?

6 A. Before I went on Monday to deliver the documents I called
7 her. I called her early morning. I said, we have a situation.
8 My mother passed and I need to go to Mexico right now. And you
9 and I, we're going to go to deliver the documents today, so,
10 what do I do? I am under a lot of pressure. My mother passed
11 and I was crying. And she says, just bring the documents and I
12 deliver them for you, as a humanitarian effort that I would do
13 for you.

14 Q. And she told you that she was doing this as a humanitarian?

15 A. She didn't say that. I was crying and she said, Fernando,
16 just bring the documents -- oh, I explained to her that I needed
17 to go right away, because they were going to cremate my mother.
18 And my wife, at this time, found a flight from Juarez to Mexico,
19 so I needed to leave right away. I -- and she says, just bring
20 the documents and I will deliver them for you. And I run to the
21 courthouse. I met her in the front. I give the documents to
22 her and she says go and take care of your mother. I will
23 deliver the documents for you right now.

24 Q. And at this point, you were also still concerned about the
25 completeness of the documents, right?

1 A. To be honest with you, at this time, all I wanted was to
2 see my mom for the last time before they did the cremation. I
3 was hoping that I made it on time to Juarez. I was hoping
4 that --

5 I hope with all my heart that you still have your
6 mother, which is a blessing. I lost mine and it was one of the
7 most difficult times in life. You don't think straight. You
8 don't make decisions. You try to fix the problem and move on
9 and be with your mother. That was my priority, to be honest
10 with you, that day.

11 Q. But you took time out of that to make sure you were
12 following the court's order, because you went to the U.S.
13 Attorney's Office?

14 A. Yes.

15 Q. You had some moment to think about your compliance with the
16 court order --

17 A. I think --

18 Q. "Yes" or "no," sir?

19 A. Yes, like I said --

20 (Witness speaking over counsel.)

21 Q. Okay. And before -- and the Friday before, you were still
22 worried about the completeness of your submission, correct?

23 A. No. To be honest with you, that day, all I wanted was to
24 make sure the documents were delivered on time and I made it to
25 my flight to go to see my mother for the last time.

1 Q. Okay --

2 A. It was the priority for me, sir.

3 Q. -- and you --

4 A. I didn't even think if it was complete or not anymore. I
5 just went and delivered the documents.

6 Q. But that's on Monday. But on Friday, you were still
7 concerned and asking questions about what you needed to submit,
8 correct?

9 A. Yes.

10 Q. Okay. Can you say that louder?

11 A. Yes, sir.

12 Q. Okay. And you had this discussion with Ms. Kanof about
13 your mother passing and your need to get to Mexico, correct?

14 A. That was on Monday morning, yes.

15 Q. All right.

16 A. And I said --

17 Q. And part of that, you explained to her the details, you
18 know, that you had to leave to Mexico, correct?

19 A. I just told her, Ms. Kanof, I'm sorry to call you early
20 this morning. You were going to walk with me to deliver the
21 documents. My mother passed. I need to go to Mexico right now
22 and -- and I need to deliver the documents right now. And she
23 said, Fernando, take care of your mother. Bring the documents
24 to me and I will deliver them for you.

25 Q. Okay. And that -- that helped alleviate your concerns

1 about getting this to the court, correct?

2 A. Well, we'll take care of that big pending thing that I have
3 and that would give me enough time to make it -- I only had
4 about 30 minutes to go, deliver and go to Juarez.

5 Q. But you felt better about the documents at this point,
6 because you knew that a U.S. attorney was delivering it to the
7 court, right?

8 A. I -- you are asking me a question, I didn't think they were
9 complete or not. All I think is that I need to deliver this
10 document and I go to see my mother.

11 Q. Okay. But the only person you asked to do this was the
12 U.S. attorney, correct?

13 A. That's the first person that came into my brain that
14 morning when you're not thinking, when you're not -- again, it's
15 a stress --

16 Q. I understand, sir.

17 A. -- that you can't believe it.

18 So the first thing that came to my mind it's --
19 Ms. Kanof is the one asking me all of these questions and all of
20 these meetings, so I thought she's at the courthouse, she's
21 there, so, yes, that's the first thing I did, to call her and
22 said [sic] my mother passed, and she said, deliver the
23 documents; I will deliver them for you.

24 Q. But you felt better because she was delivering them and not
25 you?

1 A. To be honest with you, if you were in the front door and
2 you offer me to do that thing, I will give them to you --

3 Q. Okay.

4 A. -- and I wanted --

5 Q. My question is you felt better that she was delivering it
6 instead of you, correct?

7 A. I felt better that somebody was delivering the documents,
8 yes.

9 Q. But her, in particular, correct?

10 A. If it was anybody from the room, I wouldn't have any
11 problem.

12 Q. She's the only one you asked though?

13 A. That's the only person that she came into my mind, yes.

14 Q. And the U.S. Attorney's Office is across the street from
15 this building, right?

16 A. Yes, sir.

17 Q. About \$100 yards away?

18 A. Yes, sir.

19 Q. Okay. So why didn't you go right to the courthouse instead
20 of left to the U.S. Attorney's Office?

21 A. Because I wasn't thinking. My mother passed. And, yes,
22 it's a good question how come I didn't do that. Actually, Jose
23 Luis, when I met with him on Friday, he asked me the same
24 question, and said, I don't know. To tell you the truth, you're
25 not thinking, you're not making sense of things when your mother

1 pass. Believe me it's the worst thing that ever happened in my
2 life. So, yes, I'm not thinking. Perhaps was -- I don't know.
3 I'm not thinking, sir.

4 Q. But you had thought previous to this that you'd ask
5 Ms. Kanof, the lawyer, about how to respond. You had already
6 asked her that, correct?

7 A. No, sir. I have never asked her how to respond. I never
8 asked her how to respond. I said I have this problem. I don't
9 have the documents and that's all I have.

10 Q. Okay.

11 A. She didn't tell me, well, do this, do that. She said, you
12 can only collect and give what you have, that's all she said.

13 Q. And then she took down the information about your mother's
14 passing and you were going to be gone in Mexico, right?

15 A. Yes. I told her I needed to deliver -- I mean, yes.

16 Q. And then she told you that she would make sure the Court
17 knew that, correct?

18 A. She just told me, I will deliver the documents for you. Go
19 ahead and take care of your mother.

20 Q. And let the Court know?

21 A. I don't know if she was going to let -- probably she said
22 that, yeah. Probably I would let them know that your mother
23 passed, that you needed to go. I mean I don't know.

24 Q. So, yes, the answer is yes, sir, correct? You said, yes?

25 A. Yes.

1 Q. Okay. And she also went and filed a motion for more time
2 on your behalf explaining all of the details of your mom,
3 correct?

4 A. I'm not aware of that, sir.

5 Q. You are not aware of that?

6 A. That she asked for an extension or something; is that what
7 you're saying, for my documents?

8 Q. Correct.

9 A. I don't know what -- what she did. All I ask her was to
10 deliver the documents. She offered to deliver the documents.

11 Q. And then explain to the Court about what had happened?

12 A. I don't know if she was going to explain to the Court. I
13 don't know if she knew what happened. I told her what happened
14 and that was it.

15 Q. And then the documents are submitted to the Court by the
16 government, correct?

17 A. I think so. I wasn't there. I just gave the documents to
18 her to be delivered.

19 Q. Well, did you ever follow up and ask?

20 A. I think I send her a text when I came back from Mexico and
21 I said was the documents delivered, and she said, yes, no
22 problem, something like that.

23 Q. So you did, correct?

24 A. Yes, I did.

25 Q. Did you reach out to your lawyers about the documents in

1 the subpoena?

2 A. No. Not anymore.

3 Q. You didn't need to because Ms. Kanof already took care of
4 that?

5 A. When they were delivered.

6 Q. You weren't concerned anymore about complying with the
7 Court's order?

8 MR. GONZALEZ: Objection, Your Honor. Argumentative.

9 THE COURT: Sustained.

10 BY MR. HANSHEW:

11 Q. At that point in time and leading to today, have you talked
12 to your lawyers about the response to the subpoenas?

13 A. No, sir.

14 Q. And why not?

15 A. It's a done deal. There's nothing I can do. We already
16 produced -- we already collect what we have and there's no more
17 documents.

18 Q. And to be clear, Ms. Kanof did?

19 A. I'm sorry.

20 Q. Ms. Kanof did, correct?

21 A. I was hoping that she did. She offered to deliver the
22 documents and that's it.

23 Q. Not hoping. You know she did?

24 A. Well, I know she did, yes.

25 Q. On your behalf?

1 A. Um, she offered to deliver the documents because of the
2 situation and, yes, she did.

3 MR. HANSHEW: Judge, may I have a moment?

4 THE COURT: Yes, sir.

5 BY MR. HANSHEW:

6 Q. Mr. Gireud, when you provided the documents to Ms. Kanof,
7 had you separated any of those documents into envelopes?

8 A. No, sir. I just gave her the documents in a binder just
9 like the one that you have.

10 Q. Okay. Did you know that eventually the documents, when
11 they were submitted to the Court by Ms. Kanof, were separated,
12 some of them in envelopes?

13 A. No.

14 MR. HANSHEW: No further questions, Judge.

15 THE COURT: Mr. Gonzalez?

16 FERNANDO GIREUD,

17 CROSS-EXAMINATION BY THE GOVERNMENT

18 BY MR. GONZALEZ:

19 Q. Mr. Gireud, you and I met on Friday; is that correct?

20 A. Yes, sir.

21 Q. And when we went met, we went over the through the
22 different relationships you've had with other attorneys; is that
23 correct?

24 A. Yes, sir.

25 Q. And would you explain to us what you understood when you

1 hire -- what it is that it takes to hire an attorney, your
2 understanding; not mine, yours?

3 A. What is it that it takes to hire an attorney?

4 Q. Yes, sir?

5 A. You go ahead and sit down with them, you explain you have a
6 case. It could be any kind of case. And you ask to be
7 represented by the attorney and you sign a contract and then you
8 are being represented by an attorney.

9 Q. Now, was that your understanding or my understanding?

10 A. That's my understanding.

11 Q. And did I tell you what it takes to form a contract with a
12 lawyer or did I ask you about that?

13 A. You asked me about that.

14 Q. And how many times -- how many different examples did you
15 give me?

16 A. I think I gave you three examples. I give you one where I
17 had an attorney to represent me on a case of -- with El Paso
18 Electric, and he work -- we sign a contract and we work on a
19 contingency basis.

20 Q. What does that mean to you?

21 A. That he's going to represent me, that he's going to give me
22 opinions, provide legal advise to me, if necessary, and he's
23 going to represent my interest in --

24 Q. Was that a civil matter or a criminal matter?

25 A. This was a civil matter, I guess. This is a -- a labor

1 issue.

2 Q. And what was the other example that you gave him when you
3 hired an attorney?

4 A. The other example was in a criminal case. I hired Mary
5 Stillinger and in that situation, again, she draft a contract
6 and it has a fee, so I have to pay her a fee and she was going
7 to represent me with the contract in-hand that she was going to
8 take care of the issue with me.

9 Q. And I'm sorry. But going to the first example you gave me,
10 in your mind did you have a contract with that lawyer?

11 A. Yes, I have a contract. We signed a contract.

12 Q. And in the sentence you just gave me, did you have a
13 contract, in your mind, with that lawyer?

14 A. Of course.

15 Q. And you gave a third example when you retain an attorney.
16 Would you tell us about that one?

17 A. Yeah, that was Rene Ordoñez, which is another attorney that
18 is working on the civil cases. And yes, again, we draft a
19 contract. We have a contract and there was a fee, and he is
20 representing me in the civil case with that, but we do have a
21 contract, yes, sir.

22 Q. Have you ever discussed a contract with Ms. Kanof between
23 you and her?

24 A. No, sir. No, sir.

25 Q. Have you ever thought that she represented you?

1 A. She doesn't representing me [sic]. She doesn't and she
2 never have represented me.

3 Q. Now, when we met, I asked you to produce two things --

4 A. Yes, sir.

5 Q. -- or to look at two things. What are the first things?

6 A. You asked me to find out how did I got the subpoena from
7 [sic] and when did I got it, and I told you I believe I got
8 it -- I believe it was to sent to Mary Stillinger and then Mary
9 Stillinger sent it to Rene Ordoñez, which we're talking about
10 attorneys that I have a contract with, and then Rene Ordoñez
11 sent it to me.

12 Q. So your retained attorneys provided you with that subpoena.
13 It was not Ms. Kanof or Ms. Arreola or anyone else from the
14 government; is that correct?

15 A. Nobody from the government. It came from my retained
16 attorneys.

17 Q. And you received the subpoena in early March; is that
18 correct?

19 A. Yes.

20 Q. And were you working on that subpoena to comply with it for
21 those two months, between March and April when it was due?

22 A. I have -- I had a -- I work for a company. I work eight
23 hours a day. I travel a lot in the United States. So, yes, I
24 was making the time in weekends and all this, I knew I had
25 plenty of time to look for documents.

1 Q. And during those two months, did you ever talk with
2 Ms. Kanof about the compliance of that subpoena?

3 A. Never, sir.

4 Q. Until when?

5 A. Until -- I think the first time I talked to them about the
6 subpoena was that -- I think that Friday.

7 Q. Friday. And they were due on the 11th, so it would have
8 been Friday, April the 8th?

9 A. Yes, April the 8th.

10 Q. And just to be clear, whose idea was it to talk to
11 Ms. Kanof? Was it your request?

12 A. No. When I called Agent Fry, that was the first person I
13 call, and he said let me talk to the ladies and that's when they
14 came on.

15 Q. So it was Agent Fry's suggestion, not yours?

16 A. It was Agent Fry's. He was the one that made the
17 conference call. I did not.

18 Q. And then the other thing that I asked you to produce was
19 what, sir, when we met?

20 A. I thought it was to make sure I had the documents with me,
21 and just in case somebody asked, and if I had ever touched the
22 documents and if I have every -- add or delete something, so I
23 said, no. I just bring those documents. I think -- I don't
24 have the little note that I have, but I thought it was that.

25 MR. GONZALEZ: I may I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. GONZALEZ:

4 Q. Mr. Gireud, I'm handing you what's been marked Government's
5 Exhibit 7. Would you look through that document?

6 A. Yes, sir.

7 Q. Do you recognize Government's Exhibit Number 7?

8 A. Yes, sir.

9 Q. What is Government's Exhibit Number 7?

10 A. This is the subpoena requested to collect the documents.

11 Q. Okay. What's beneath the subpoena? Is it the actual
12 documents that pertain to the subpoena?

13 A. Yes, sir.

14 Q. And are those -- is that -- when did you produce that
15 record for us? Did you bring it in this morning?

16 A. Yes, I brought it. You asked me to bring the documents in
17 case somebody asked me. And you told me just bring them exactly
18 the way you left them and that's what I did.

19 Q. And is that a copy of the records that you provided to
20 Ms. Kanof on or about April 7th?

21 A. I -- yes, this is -- I -- I give her a package exactly like
22 this. I went to copy the documents and what they were produced
23 I put them on a binder -- I mean in a rubber band and that's
24 what I gave her.

25 Q. And that, the document in Government's Exhibit 7, has been

1 in your possession the entire -- this entire time; is that
2 correct?

3 A. Yes, sir.

4 Q. It's never been in the government's possession, correct?

5 A. No, never. No.

6 Q. And that's an exact copy of what you gave Ms. Kanof?

7 A. Yes, sir. That's my understanding, the copier [sic] was
8 fine, yes, that's should be an exact copy.

9 Q. And when you produced this, the copy that you gave to
10 Ms. Kanof, did you have Government's Exhibit 7 with you at that
11 time, that Sunday -- I mean, that Monday morning? Do you
12 understand what I'm asking?

13 A. No, sir.

14 Q. You brought her the documents, correct, or you came on
15 Monday with the documents, correct --

16 A. Yes.

17 Q. -- that you have government's exhibit with you, the copy?

18 A. No, sir. I left my copy in my house and I just brought the
19 copy that was going to be delivered to the court.

20 Q. And when you handed the documents that were to be delivered
21 to the court, does -- how much time did you spend with
22 Ms. Kanof?

23 A. Probably one minute or less than a minute.

24 Q. And where did this meeting occur?

25 A. In the front of the building of the federal building. Just

1 as you pass security, the elevator opened and she came up. I
2 gave her the documents because I was -- I needed to leave, and I
3 said thank you very much for doing this for me.

4 Q. Did she stand there with you and go through the documents
5 to see?

6 A. No, sir. She just told me God bless you, take care of your
7 mom, and I will deliver this for.

8 Q. Did she pull anything out of that stack of documents that
9 you gave her?

10 A. No, sir.

11 Q. Did she give you anything to return?

12 A. Nothing. She just -- she just said God bless you, take
13 care of your mom, I will deliver the documents for you.

14 MR. GONZALEZ: Your Honor, at this time we move into
15 the record Government's Exhibit 7.

16 THE COURT: Mr. Hanshew?

17 MR. HANSHEW: No, objection.

18 THE COURT: GX-7 is admitted.

19 BY MR. GONZALEZ:

20 Q. Now after you received the subpoena, who did you reach out
21 to?

22 A. When I got the subpoena?

23 Q. Yes, sir.

24 A. I reached out to Mary Stillinger and I reached out to Rene
25 Ordoñez.

1 Q. And approximately how many different times did you talk to
2 those attorneys about that subpoena?

3 A. I left a message -- about three messages or four messages
4 to Mary Stillinger and I talked to Rene Ordoñez about two or
5 three times.

6 Q. But Rene Ordoñez was your civil attorney?

7 A. Yes, sir.

8 Q. Did he make it appear to you that he was your civil
9 attorney?

10 A. Yes, he did.

11 Q. Did he make it clear he was not your attorney on that
12 subpoena?

13 A. Yes, sir.

14 Q. What did he instruct to you do?

15 A. He asked me to collect as much documents as you can and
16 that's all you can do.

17 Q. Did he say anything that was essentially different what --
18 for what Ms. Kanof said?

19 A. No, sir. No, sir.

20 Q. And again you testified earlier that you were under a lot
21 of stress. What were the stressors that you were under?

22 A. Well, number one, and I'm sorry if I don't put enough
23 priorities, but number one, the health of my mother. She's been
24 sick and she's getting ill, so I have a lot of pressure on that.

25 Second, my daughter is getting married on April

1 the 9th, and you're combining two huge events in the life of a
2 person; number one, the marriage of a daughter and the
3 illness various [sic] of your mom, and on top of that you add
4 that I -- we've been involved in this case for three years or
5 whatever and we're going to have a -- it's going to happen and
6 then it change, and then it's going to happen and then it
7 change. And then on top of that, you have a subpoena, a
8 document you have to produce and, uh, uh, I'm sorry, but it was
9 very, very stressful.

10 And at the same time, I have to work ten to
11 eight hours a day with my company, so believe me, I'm not young
12 anymore to do these things or to cope with so many things at a
13 time. But I did my best.

14 MR. GONZALEZ: May I have a moment, Your Honor?

15 THE COURT: Yes, sir.

16 MR. GONZALEZ: Pass the witness, Your Honor.

17 THE COURT: Mr. Hanshew?

18 MR. HANSHEW: Nothing further, Judge.

19 THE COURT: You may step down, Mr. Gireud.

20 THE WITNESS: Thank you, sir. Thank you.

21 THE COURT: Did you have any other witnesses?

22 MR. HANSHEW: No Judge.

23 THE COURT: Mr. Gonzalez?

24 MR. GONZALEZ: No, Your Honor.

25 THE COURT: All right.

1 Mr. Hanshew, argument?

2 MR. HANSHEW: For argument, Judge?

3 THE COURT: Yes, sir.

4 ARGUMENT BY THE DEFENSE

5 MR. HANSHEW: Judge, I'd ask that we incorporate our
6 pleadings that we filed with the Court. We filed both obviously
7 the motion itself as well as the reply to the government's
8 response, so those are lengthy. I'm going to try to -- I'll
9 incorporate those by reference and make that part of my argument
10 and try to summarize based on the evidence today, Judge,
11 relating to that.

12 THE COURT: Okay.

13 MR. HANSHEW: I think what you saw here questionably
14 is the creation of an attorney-client relationship. Whether the
15 government's version or Mr. Gireud's purported version today
16 of -- that, you know, we have attorney-client relationship when
17 you sign a contract and pay a fee, we know full well that that
18 is not correct as a matter of law.

19 What occurs when there's attorney-client relationship
20 is when an individual seeks out counsel as it relates to legal
21 matters and responding to, for example, in this case, a legal
22 order, an order from this Court. That's precisely what we heard
23 that Mr. Gireud did, first to his retained lawyers that he's had
24 in the past to ask questions about how he's supposed to respond,
25 you know, the manner in which he does, the time and place these

1 types of things, the completeness.

2 When he received no response from Ms. Stillinger until
3 a later date, which that date changed, I would note, and/or you
4 know being told by his attorney that he separated out the
5 matters in which he represents him, but then still advises him
6 he needs to comply with the Court's order and be complete and
7 turn in these submissions.

8 He turns to next, the next lawyer that he knows, which
9 was his son, gets a similar response, obviously not feeling
10 satisfied that he's going to be compliant and wants to get
11 assurances who does he turn to lastly? A United States federal
12 prosecutor a United States attorney. I mean who could make an
13 individual that's respond nothing a criminal case feel more
14 relieved in.

15 MS. KANOF: Object.

16 MR. GONZALEZ: I know this is /R-R misrepresentation
17 of what she just heard the person he reached out to was Agent
18 Fry not in the Kanof.

19 THE COURT: It's first person he reached out to was
20 Mr.

21 MR. HANSHEW: The proximate as I for Ms. Kanof, that
22 to get what he needed done in terms of his legal obligation
23 social security absolutely clear that's we are went to. That
24 actually occurred before and I'm absolutely specific thick to
25 the experience speck thick before his mother passed he already

1 initiated this exact process. The only thing that changed from
2 you to believe this testimony and credibility which I would call
3 into question as well, Judge; that instead of going and having a
4 protracted meeting on that Monday he supposedly came and had a
5 minute or two whatever it is and just handed off these documents.

6 But at the end of the day he didn't come here to the
7 Court house to do it. He was told by an attorney, Ms. Kanof
8 to take it to her. And frankly the stressor of, you know,
9 turning right or left and going -- that doesn't, in my humble
10 opinion, make sense that -- my argument is that, that occurred
11 because who else would better represent you in this matter? Who
12 else would provide the security of both alleviating his own
13 concerns about whether he's complied and the security of being
14 the intermediary between this Court and himself. He knew full
15 well that when he sent that to her and had her go take it over
16 and gave all of the explanations about what had happened in his
17 personal life and, also, what had happened in terms of him
18 trying to be as responsive as possible to be compliant, then the
19 United States attorney, Ms. Kanof, of course that's where he
20 went. It is the last attorney and the only one that actually
21 went through doing the process of what lawyers do, which is
22 finding out the information, representing it to a court, which
23 they did, and filed a motion on his behalf identifying the
24 information that was shared to him as it relates to his real
25 obligation to this Court's order. There is no question that

1 there was an attorney-client relationship created there; no
2 contract, no fee arrangement, no -- nothing of that. That is a
3 red herring, Judge. That, we know.

4 We don't have to look further than the Federal Public
5 Defender Office. I don't have any contracts or fee agreements
6 and I still represent thousands of people over my career. That
7 happens all of the time. One of the things we learn when we're
8 lawyers, even in law school, is the carefulness and
9 thoughtfulness by which a person who's an attorney goes about
10 providing advice and counsel and representation to others. And
11 there's a reason for that.

12 One, as we put in our motion, one, it's illegal for
13 government attorneys to provide counsel, which they did in this
14 case. Ms. Kanof provided legal counsel, Judge. That's a
15 violation there.

16 It also results in an individual, and I understand
17 that he's, you know, he stated here that what he provided is
18 what exactly Ms. Kanof provided, but it's about how he got to
19 that. It's about how he got to whether he was being compliant,
20 whether his submissions were complete or not. That's what he
21 spoke with them about. That's what he got legal advice about.

22 There's a clear relationship. It's a violation of
23 law. It's a violation of ethics. And it's a prejudice to
24 Mr. Delgado in this case. It's a prejudice, not just in terms
25 of the fact that they've possibly created a scenario where this

1 person didn't turn in everything they could have, because they
2 were advised about certain manners and means to deliver or find
3 information.

4 It also creates a relationship between the U.S.
5 attorneys and Mr. Gireud that the only people that know about it
6 are the people in this courtroom right now, not the jurors who
7 are going to be here in about an hour, who when they see this
8 government, counsel stand up here on direct presumedly and
9 asking Mr. Gireud questions, that doesn't look the same and
10 sound the same and give us the impression as for example if I
11 were to be directing Mr. Delgado. Every person in that jury, if
12 I'm up here directing Mr. Delgado, is going to know late or not
13 that I'm his attorney and we have an attorney-client
14 relationship and all the things that flow from that. They're
15 not going to know that when the government is up here asking
16 that. It's going to just look like another government witness,
17 not a witness that they've developed a bond and, in fact,
18 attorney-client relationship.

19 So, Judge, we would ask the Court to dismiss this case
20 or alternatively exclude the U.S. -- the Western District U.S.
21 Attorney's Office in this case or as an alternative and the last
22 resort at the very least that Ms. Kanof be recused from this
23 case, Judge.

24 THE COURT: All right. Thank you, Mr. Hanshew.

25 ARGUMENT BY THE GOVERNMENT

1 MR. GONZALEZ: May it please the Court.

2 Your Honor, it really is a sad day when we can't even
3 speak to another civilly when the criminal defense attorneys
4 cannot reach the prosecutors, cannot find out what it is that
5 was turned in, what it is that's missing. My understanding from
6 the last hearing was that that was their concern that somehow
7 Ms. Kanof took something out of that package of the documents
8 that were turned to the Court this morning. They could've asked
9 us. They could have asked if the witness had a copy. They
10 never asked. That wasn't their concern. Their concern was to
11 impugn the integrity of this prosecution. It's really sad state
12 of as to where we are, Your Honor. But the Court has the
13 documents. The Court can compare the documents that were
14 tendered today to what was submitted back on April 11th, Your
15 Honor. They're all there, Your Honor.

16 There is no reason why Ms. Kanof would do that. In
17 fact, as you heard today, Ms. Kanof had, as far as any
18 representation of Mr. Gireud, that never occurred. There were
19 months that went by Mr. Gireud was trying to comply with the
20 subpoena. He talked to Ms. Stillinger's office. He tried to
21 speak to her office, but they were not returning that phone
22 call. That was sad. Who did he reach out to? He reached out
23 to Rene Ordoñez. What did Rene Ordoñez also in essence turned
24 him away, but says, do what you have to do; turnover the
25 documents. I'm not your attorney on that matter.

1 Mr. Gireud is concerned that he's in compliance -- not
2 in compliance with the Court's subpoena. What does he do next?
3 He reaches out to his own son, who doesn't represent him on this
4 matter, but "what do I do son." Can't get ahold of his son
5 either. What does he do next? It's the 11th hour. It's a
6 Friday before the Monday that these documents are due, the day
7 before his daughter getting married, and as it turns out, two
8 days before, his mother dies. What does he do? He reaches out
9 to Agent Fry. He's not asking to speak to Ms. Kanof or to
10 Ms. Arreola. He's asking to speak to Agent Fry. For what
11 purpose? He doesn't know what to do. He's not asking for
12 counsel. He doesn't know what to do. He wants to comply with
13 the Court's subpoena. What does Kanof do eventually when Agent
14 Fry talks to her? She has compassion as an officer of the Court
15 to speak to the witness. Okay. Bring in what you have. I'll
16 get it to the Court. I'll walk you across. That's all she's
17 doing, Your Honor. She's working as an officer of the Court.
18 We've all upheld an oath to uphold the Constitution and to
19 follow the laws and that's all she was doing, Your Honor, and
20 yet that somehow was painted to something dirty, something ugly.
21 That's reprehensible, Your Honor. But, yet, no one really cares
22 about the documents in question. Do they ever try to find them?
23 No. They instead want to soil our representations by lodging
24 all of these baseless accusations -- allegations and
25 accusations, Your Honor.

1 Your Honor, you have the documents and you've heard
2 the testimony of the witness. He never thought he had an
3 employment contract or representation with Ms. Kanof or anyone
4 else with the Government. Ms. Kanof at the last hearing said
5 the same thing. There is no meeting of the minds. There was
6 never a contract. There was never any legal representation.
7 All she did was try to help produce the evidence and that's all,
8 Your Honor.

9 We would ask that you deny the motion to dismiss as
10 well as the motion to recuse our office.

11 THE COURT: All right.

12 Mr. Hanshew, did you want to close the argument?

13 MR. HANSHEW: If I May, Judge.

14 CLOSING ARGUMENT THE DEFENSE

15 MR. HANSHEW: Just a reply in turn.

16 With all due respect to Mr. Gonzalez, he clearly
17 didn't read our motion or our reply, because in our initial
18 motion papers, we identified even with headers that the problems
19 involved here weren't just about the ultimate documents.
20 There's headers in here about the unethical relationship, the
21 illegal contact, the violation of law. So, to stand up here
22 today and start his argument with we thought this was about one
23 singular point, is either an act of purposeful omission or
24 negligence in not being prepared for what the totality of the
25 motion said. I mean that's an outlandish statement to make when

1 the motion sets forth all of these. I'm sure that's not missed
2 on the Court.

3 Secondly, what Mr. Gonzalez just explained confirms
4 our main point, which is reaching out to your lawyer, reaching
5 out to your lawyer, reaching out to your son lawyer, reaching
6 out for the same questions and ultimately reaching out. Sure,
7 they can say Mr. Fry, but that's because Mr. Fry is the point
8 person, but that then turns to Ms. Kanof.

9 And to be clear on this record, Ms. Arreola gave the
10 only response that we all know is the proper response. That
11 response is go talk to your lawyer. Did Ms. Kanof do that? We
12 didn't hear anything about that. What we heard was, no. She
13 answered and helped with the problems and concerns that he had
14 after not getting ahold of his lawyer and his other lawyer and
15 his other lawyer. It's clear, Judge, that relationship was
16 created. Contracts, fee arrangements do not define an
17 attorney-client relationship. That's clear and they have
18 conceded it, Judge.

19 So again we ask the Court to grant this motion.

20 THE COURT: All right. Thank you, Mr. Hanshew.

21 I'm going to deny your motion to dismiss.

22 My primary concern was the fairness, the Sixth
23 Amendment right to a fair trial that your client holds. The
24 thing that concerned me most was that there may have been
25 documents produced that were then removed from that which was

1 turned over to the Court. I'm satisfied after listening to this
2 witness that that did not occur, so I don't have any concerns
3 with the fairness of the trial.

4 I -- I agree that we are all taught in law school that
5 the only proper response to a question by someone who is not
6 your client is hire an attorney. That's the only advice we're
7 allowed to give. Anything beyond that is in nebulous grounds.
8 And I'll leave it to the code of -- the Commission on
9 Professional Conduct to determine whether or not there was an
10 ethical violation and I'll leave it to the prosecutor to
11 determine whether or not there was a violation of the law. I
12 think I can have this trial for Mr. Delgado and provide him an
13 absolutely appropriate Sixth Amendment litigation.

14 If you'd like and you want to open the question about
15 whether or not she represents Mr. Gireud after he testifies,
16 you're welcome to cross him on that issue and submit it to the
17 jury and the jury can decide whether or not there's a
18 relationship there that they should consider in evaluating
19 Mr. Gireud's testimony.

20 With that, I think your client's rights are protected.
21 That's my primary interest. Anything beyond that belongs to the
22 people that are riding herd on the ethical violations and the
23 criminal violations. So I'm going to deny your motion to
24 exclude Ms. Kanof from this trial as well as the U.S. Attorney's
25 Office in the Western district.

1 Anything else?

2 MR. HANSHEW: Nothing further, Judge.

3 MR. GONZALEZ: No, Your Honor.

4 THE COURT: All right. I think we have about
5 45 minutes.

6 Oh, yeah, there was your motion to seal your response
7 regarding the lady who had the DWI, Mr. Gireud in his civil
8 case.

9 MS. KANOF: That's the motion in limine.

10 THE COURT: And some man that had an issue because he
11 didn't report a personal relationship to the company.

12 MS. KANOF: That was our motion in limine, Judge.

13 THE COURT: All right. I'm going to grant it as to
14 the person who didn't disclose his personal relationship to the
15 corporation. The others are matters of record and so I don't
16 see there's any point in doing that on those two. So in
17 relation to the man, I don't know who he is. He's one of your
18 witnesses.

19 MS. KANOF: I have a couple of other questions, Your
20 Honor. Defense counsel was going to provide to the Court, I
21 guess, the file with regard to the shoplifting --

22 THE COURT: If he wants to -- if he wants to impeach
23 that person because of -- I can't remember what the issue was,
24 whether --

25 MR. HANSHEW: She was -- the dispute is whether she's

1 a convicted felon. We know that she was --

2 THE COURT: Right. That's what it is.

3 MR. HANSHEW: -- arrested for a felony theft for the
4 second time.

5 THE COURT: Because it was deferred and then the
6 judgment was -- there was an indication there was a finding of
7 guilt, which would not be deferred.

8 MR. HANSHEW: Correct.

9 THE COURT: And so --

10 MR. HANSHEW: Yeah. So, Judge, this was the one where
11 the Court reviewed the state court docket sheet and it was --
12 and then looked at the order that the government has submitted
13 as an exhibit, which was an order that read that probation and
14 supervision had been terminated.

15 THE COURT: Well, community super- -- community
16 service. Community service was terminated.

17 MR. HANSHEW: Right.

18 THE COURT: I mean that's telling me that the
19 condition for community service was terminated, not that the
20 community supervision was terminated.

21 MR. HANSHEW: Right.

22 THE COURT: So it's kind of messed up. Did you
23 produce --

24 MR. HANSHEW: We're still investigating. As the
25 government said themselves last week, they weren't going to call

1 that witness till later, so the Court --

2 THE COURT: They're working on it.

3 MR. HANSHEW: -- we've had an opportunity to, you
4 know, to investigate and try to --

5 THE COURT: Yeah, I know that Ms. Kanof had those
6 cases saying that shoplifting is not a crime of moral turpitude
7 in that jurisdiction.

8 I guess it was a Fifth Circuit case you had.

9 MS. KANOF: It was, Your Honor.

10 THE COURT: I don't know. Maybe, that was from
11 some -- one of those other eastern states, but over here --

12 MR. HANSHEW: Right. Yeah, you had mentioned on a
13 similar vein last week, Judge, which is, you know, by anyone's
14 understanding, theft, let alone theft of the magnitude of that
15 value that was involved. And that was her second theft arrest,
16 by the way, was a crime of moral turpitude.

17 THE COURT: Right.

18 MR. HANSHEW: The issue -- the only issue that
19 remained from my understanding, Judge, if we could produce some
20 documents showing that there was a final conviction.

21 THE COURT: Right. Right. Yeah, so that's the issue.

22 MS. KANOF: Your Honor, may I ask the Court if you
23 have a schedule, a daily schedule so that --

24 THE COURT: Yeah, today we'll finish at 4:30, give the
25 jurors a chance to go home and get everything straightened out,

1 and then we'll start at 9:00 to avoid the west-side traffic
2 issue and we'll go to six.

3 MS. KANOF: Each day?

4 THE COURT: Each day.

5 MS. KANOF: And we work a full day Friday?

6 THE COURT: Yes.

7 MS. KANOF: Some courts don't.

8 THE COURT: Oh, okay. I thought maybe there was
9 something going on.

10 MS. KANOF: No, no, Your Honor. In lengthy trials in
11 the past, some judges don't work on Fridays, so they can work
12 their regular docket. I tried a ten-week trial that was managed
13 that way.

14 THE COURT: Well, yeah --

15 MS. KANOF: I just --

16 THE COURT: -- we're just -- we're going to do our
17 regular docket like from 7:30 to 9:00 every day and then do the
18 trial to 6:00 -- to 6:00, but let's make sure we have enough
19 people to get all the way to 6:00 so it only takes two and a
20 half weeks instead of four.

21 MS. KANOF: I think it's going to be a little shorter
22 than anticipated, Your Honor.

23 THE COURT: Oh, okay. All right.

24 Anything else, Ms. Hanshaw?

25 MR. HANSHEW: No, sir.

1 THE COURT: No, sir.

2 And Ms. Franco, you've been very quiet over there.

3 MS. FRANCO: Just getting riled up, Judge.

4 THE COURT: Okay. All right. We'll see you-all in
5 about 45 minutes then.

6 COURTROOM SECURITY OFFICER: All rise.

7 (Break at 8:20 a.m. to 9:00 a.m.)

8 * * *

9 (Proceedings continued in Volume 9(B).)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET
Kathleen A. Supnet, CSR

December 5, 2018
Date

KATHLEEN A. SUPNET, CSR